

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
)	

**COMMENTS OF THE STATE OF NEW MEXICO
ON
PETITIONS FOR WAIVER TO DEPLOY 700 MHz BROADBAND NETWORKS**

The State of New Mexico ("SONM") hereby submits the following in response to the Commission's August 14, 2009 Public Notice (DA 09-1819) requesting comments on petitions for waiver filed by various entities seeking authority to deploy public safety broadband systems on a local, state or regional basis in the 700 MHz public safety spectrum. SONM is among the petitioners, and seeks authority to operate a statewide public safety system within the State of New Mexico. For the reasons set forth below, the Commission should expeditiously grant SONM authority to move forward with the deployment of the New Mexico portion of the interoperable national broadband public safety network. The leasing process outlined herein will allow for the early deployment of portions of the national network, while maintaining Commission oversight to assure that all public interest policy goals are met.

THE NEW MEXICO PLAN

The State of New Mexico takes this opportunity to make clear to the Commission its sincerity, motivation, and conviction to what it believes is an urgent priority for

nationwide interoperability using the 700 MHz spectrum. The authority SONM seeks for early buildout of a statewide system will expedite the Commission's goal of implementing 700 MHz public safety interoperability on the national public safety broadband network.

As set forth in the SONM petition for waiver ("Petition"), New Mexico is one of the least densely populated states in the nation. Commercial providers face significant economic challenges in serving the rural areas of the State. As a result, government involvement is essential to the early buildout and deployment of a 700 MHz broadband public safety system to meet the critical needs of public safety users throughout the State, including its rural regions. If left solely to a national buildout, it is likely that many parts of New Mexico will be among the last to be built out as part of the national 700 MHz public safety broadband network, or in a worse case scenario, may never be built out. Therefore, SONM urges the Commission to establish a regulatory framework that will allow SONM to move forward with the construction and early buildout of a statewide 700 MHz public safety system that will be interoperable with the national public safety broadband network.

To meet the needs of all of its citizens, New Mexico has devised an initial plan for constructing and funding a 700 MHz statewide public safety system that will be interoperable with the national broadband network. In order to move forward in the most effective way possible, SONM plans to use public funds and to partner with a private sector entity to assist in the buildout and deployment of this spectrum in compliance with the Commission's requirements for public safety interoperability.

The costs associated with a statewide deployment are estimated to approach \$40 million dollars. During the 2010 legislative session (January 2010), the Department of Information Technology plans to request re-appropriation of infrastructure money that would specifically allow previously appropriated funds to be used for the construction and early buildout of a 700 MHz public safety broadband system.

SONM further intends to seek additional funding from NTIA/RUS in the form of a BTOP or BIP grant for statewide public safety broadband deployment. What this means is that if the State of New Mexico is successful in its grant application, it can leverage its previously authorized dollars into a grant that can be used to deploy the Private/Public partnership for 700 MHz in New Mexico. By leveraging its public dollars in State funding, New Mexico may be able to secure a large part of the funding necessary for an early buildout, which would make a partnership with the State very attractive to the private sector.

In the event that BTOP and/or BIP funding is not available, the State intends to pursue other public funding alternatives from both Federal and State sources (or require additional contributions from its private sector partner or partners). However, SONM believes that expedited approval by the Commission granting the State authority to proceed with an early buildout will greatly enhance the potential for NTIA/RUS funding.

**THE COMMISSION SHOULD ESTABLISH A SIMPLIFIED
PROCESS ENCOURAGING THE EARLY DEPLOYMENT OF
LOCAL, STATE AND REGIONAL PORTIONS OF THE
INTEROPERABLE NATIONAL BROADBAND NETWORK.**

In considering the requested waivers, the FCC's primary policy goal should be to create a system that will facilitate the early buildout of a portion of the interoperable national broadband network by local, regional and state entities that desire to construct

their portion of the network with public funds, through a public-private partnership or through a combination of the two. To accomplish this goal, the Commission should establish a framework whereby the Public Safety Broadband Licensee, the Public Safety Spectrum Trust (PSST), is authorized to allow buildout of spectrum by local, regional and state entities on a long-term de facto transfer lease basis pursuant to basic technical and interoperability guidelines established by the Commission.

The terms of any lease agreement should closely parallel the “term sheet” set forth in Appendix C of the September 4, 2009 “NPSTC 700 MHz Public Safety Broadband Task Force Report and Recommendations” (NPSTC Report). The specific details of these lease arrangements should be left to good faith negotiations between the PSST and Lessee, subject to final FCC approval of the lease. The primary objective of the lease should be that the early buildout will be fully interoperable with the national broadband network, including the capability for roaming.

Ultimately, the national network should be built and operated as a single network, rather than as a “network of networks.” Leasing arrangements will facilitate the ability of early builders to construct and deploy local or regional portions of the national network in cooperation with the PSST. The leasing process should not be used as means to delay the progress of early builders. If necessary, any lease arrangement should allow the lessee to obtain funding for its buildout within a reasonable time *after* the lease is executed. Proof of existing funding as a pre-condition to a lease should not be allowed by the Commission.

SONM believes that this leasing process will allow deployment of the national broadband network to commence in the most timely fashion possible. At present, there is

no D Block auction winner nor is there the immediate possibility of a D Block winner, and the national broadband licensee, the PSST, has no funding to build out the network. Waiver applicants have expressed a commitment to begin buildout as soon as possible, and to commit and otherwise secure the funding needed to do so. While some of the applicants are major cities or areas of high density population, some also include rural areas that may not otherwise be built for years to come even if a D Block winner were chosen today; this is because rural and less populous areas often are left to the latter part of any national buildout. Accordingly, authorization for waiver applicants to proceed under leasing authority, particularly for applicants with significant rural areas---such as the State of New Mexico---should be encouraged so that these areas will be constructed in a more timely fashion.

RESPONSES TO FCC QUESTIONS

Timing. The Commission should address the waiver petitions immediately. There is no public interest benefit in any further delay. Early builders deploying under the waivers should be grandfathered subject to technical and interoperability requirements adopted for the national broadband system to ensure interoperability and compatibility with each other and the national network. Any D Block auction winner would take its license with the understanding that the waiver licensee has rights in the designated waiver area. Alternatively, the Commission could place a condition on any waiver granted that, subject to adoption of final rules, the early builder may be required to engage in good faith discussions with the PSST and/or D Block winner to allow a buyout of the early builder's facilities. However, the waiver licensee should be fully compensated for its costs of early construction and should receive assurances that its interests will continue to be protected.

Authority to Operate. As noted above, the Commission should grant authority to the waiver applicants to build and operate on the 700 MHz public safety broadband spectrum pursuant to lease arrangement with the PSST. These lease agreements should specify the technical standards and other terms of the waiver applicant's operations and should closely parallel the term sheet in Appendix C of the NPSTC Report.

Existing early buildout rules. The existing early buildout rules do not apply since there is no D Block winner. Waiver applicants should be granted a more permanent arrangement via the lease vehicle. This means that any D Block winner would take subject to that arrangement. The early builder would be building a portion of the national network with the understanding, under the terms of the lease, that the early builder's portion would be compatible with the eventually-to-be-constructed national network. As the national network proceeds with construction, with or without a D Block winner, there should be mechanisms in place to facilitate discussions and cooperation among all of the parties (PSST, early builders and commercial partners) to ensure the cohesiveness of the national network. This could be done through the establishment of an advisory committee of early builders to work with the PSST.

Narrowband Operations. The relocation of narrowband operations should be funded at the national level through a mechanism established and administered by the PSST. This may include some amount of funding by early builders for relocation of narrowband operations within their own respective waiver territory. Because this is a national issue, any funding by early builders should be reimbursed.

Sufficiency of Pleading. There is enough information within the waiver pleadings to allow the applicants to go forward in negotiating a lease with the PSST. The

Commission should not get involved in evaluating sufficiency of funding availability, nor should it get involved in applicants' technical proposals as part of granting a waiver. The PSST should address these issues pursuant to lease negotiations with the early builders. There should be no requirement imposed that construction of the system be fully funded prior to grant of a waiver or entry of a lease agreement with the PSST. As a condition of the lease, certain reasonable requirements could be negotiated between an early builder and the PSST, including buildout and funding milestones.

Interoperability. SONM fully supports interoperability. As a waiver applicant, New Mexico's purpose is not to build a separate network, but a local/regional portion of the national network. The NPSTC efforts to define the interoperability requirements were undertaken at the behest of the PSST, and SONM fully supports those efforts and recommendations. Ultimately, the PSST lease agreement will define the interoperability requirements, and these requirements are best left to that forum. A PSST advisory group should be formed made up of the waiver recipients to work with the PSST to ensure interoperability.

Mutually exclusive waivers. Overlapping systems should be required to coordinate with each other; again, each waiver recipient is building a portion of the national system. The issue is best sorted out by the PSST through the lease negotiation process. This would also avoid any *Ashbacker* issue of mutually exclusive applications requiring a hearing.

Enforcement. This should be handled through the lease process. Deployments could be monitored carefully by the PSST and the Commission, with the Commission mandating certain periodic reporting requirements based on the lease agreement. Although there are some common conditions, not all waiver applicants are like situated. The needs and

requirements of a system in rural parts of New Mexico where population density may be less than 16 people per square mile are certainly different from those in New York City. Flexibility should be allowed to accommodate these different needs and requirements. By allowing this to be handled by the PSST through the lease process, such flexibility can be accommodated in the early deployment of local portions of the national network while assuring that the concerns of the national licensee are addressed.

Permissible Use. The Commission has made clear that non-public safety users could (and should) be allowed access to the public safety 700 MHz Broadband spectrum on a *secondary preemptible* basis.¹ The Commission found this to be necessary in order to facilitate creation of a public-private partnership pursuant to which the private partner would provide funding to buildout the public safety 700 MHz broadband spectrum. The Commission found specifically that such secondary preemptible commercial use in the context of a public-private partnership is consistent with Section 337. It can be anticipated that some early builders, including SONM, deploying on this spectrum pursuant to waiver will seek to fund the buildout, at least in part, by means of a public-private partnership under which the private partner will contribute funding to assist in constructing the system. In such circumstances, secondary preemptible use by non-public safety users should be allowed in accordance with the Commission's interpretation of the statute.

¹ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15 at ¶ 419 (2007); Also see, Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable, Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 at ¶¶ 92-94 (2008).

Flowmobile. Neither Flowmobile nor any other commercial entity should be allowed to obtain a license or lease on the public safety broadband spectrum. Commercial entities should be encouraged to work as part of a public-private partnership to assist in the buildout of this spectrum, and in such circumstances should be allowed access to the spectrum on a secondary preemptible basis as provided for in the existing rules.

CONCLUSION

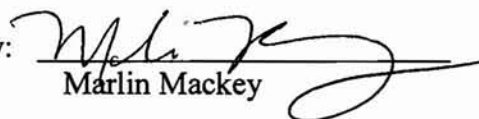
In view of the foregoing, SONM requests that the Commission grant a waiver of the 700 MHz rules to allow for the early construction and deployment of an interoperable 700 MHz public safety system in the State of New Mexico.

Respectfully Submitted,

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR

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